

## § 5.853

household member who is no longer engaged in such behavior, you may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, you may require the applicant or tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(2) If rehabilitation is not an element of the eligibility determination (see § 5.854(a)(1) for the case where it must be considered), you may choose not to consider whether the person has been rehabilitated.

(d) *Length of period of mandatory prohibition on admission.* If a statute requires that you prohibit admission of persons for a prescribed period of time after some disqualifying behavior or event, you may apply that prohibition for a longer period of time.

(e) *Nondiscrimination limitation.* Your admission and eviction actions must be consistent with fair housing and equal opportunity provisions of § 5.105.

## § 5.853 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in subpart A of this part: *1937 Act*, *covered person*, *drug*, *drug-related criminal activity*, *federally assisted housing*, *guest*, *household*, *HUD*, *other person under the tenant's control*, *premises*, *public housing*, *public housing agency (PHA)*, *Section 8*, *violent criminal activity*.

(b) *Additional terms used in this part* are as follows.

*Currently engaging in.* With respect to behavior such as illegal use of a drug, other drug-related criminal activity, or other criminal activity, *currently engaging in* means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current.

*Owner.* The owner of federally assisted housing.

*Responsible entity.* For the Section 8 project-based certificate or project-based voucher program (part 983 of this

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title) and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an Annual Contributions Contract with HUD. For all other federally assisted housing, the responsible entity means the owner of the housing.

### DENYING ADMISSIONS

## § 5.854 When must I prohibit admission of individuals who have engaged in drug-related criminal activity?

(a) You *must* prohibit admission to your federally assisted housing of an applicant for three years from the date of eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, you may admit the household if:

(1) The evicted household member who engaged in drug-related criminal activity has successfully completed an approved supervised drug rehabilitation program; or

(2) The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(b) You *must* establish standards that prohibit admission of a household to federally assisted housing if:

(1) You determine that any household member is currently engaging in illegal use of a drug; or

(2) You determine that you have reasonable cause to believe that a household member's illegal use or a pattern of illegal use of a drug may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

## § 5.855 When am I specifically authorized to prohibit admission of individuals who have engaged in criminal activity?

(a) You may prohibit admission of a household to federally assisted housing under your standards if you determine that any household member is currently engaging in, or has engaged in during a reasonable time before the admission decision:

- (1) Drug-related criminal activity;
- (2) Violent criminal activity;